

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FMP Resistance Welding Supply, Inc.,	:	Case No. C-1-05-275
	:	
Plaintiff,	:	District Judge Susan J. Dlott
	:	
v.	:	ORDER DENYING AS MOOT
	:	DEFENDANTS' MOTION TO
Cobasys, LLC, <i>et al.</i> ,	:	STAY AND DISMISSING AND
	:	CLOSING CASE
Defendants.	:	

This matter comes before the Court on Defendants' Motion to Stay Pending Determination in First-filed Michigan Action as to Whether the Michigan Action or the Ohio Action Should Proceed (doc. # 11) and Defendants' Notice of Ruling in First-filed Michigan Action that the Michigan Action, not the Ohio Action, Should Proceed (doc. # 15). Plaintiff FMP Resistance Welding Supply, Inc. ("FMP") filed their Complaint (doc. # 1) and Motion for Preliminary Injunction (doc. # 2) against Defendants Cobasys, LLC, Innovative Machine Corporation, and the Taylor-Winfield Corporation ("Defendants") on April 25, 2005. On February 4, 2005, however, Defendant Cobasys, LLC ("Cobasys"), had filed an action against FMP for a declaratory judgment regarding the same dispute in the Eastern District of Michigan (the "Michigan action"). (See doc. # 11, ex.2.) On May 16, 2005, Defendants Innovative Machine Corporation and the Taylor-Winfield Corporation joined Cobasys as Plaintiffs in the Michigan action.

On June 10, 2005, Defendants moved to stay this case pending a determination in the Michigan action as to whether that case or this one should proceed. (Doc. # 11.) Plaintiff opposed

the motion.¹ (Doc. #12.) Defendants have since filed the Notice (doc. # 15) informing this Court that the Michigan Court has issued an order declaring that the Michigan action should proceed. As such, this Court **DENIES AS MOOT** Defendants' Motion to Stay Pending Determination in First-filed Michigan Action as to Whether the Michigan Action or the Ohio Action Should Proceed (doc. # 11).

In their Notice, Defendants also request that, pursuant to the Michigan Court's order, "this action be dismissed and administratively closed to avoid duplicative litigation." (Doc. # 15 at 2.) The Michigan Court held that pursuant to the first-to-file rule², the Michigan action should proceed to the exclusion of this action. See Cobasys, L.L.C. v. FMP Resistance Welding Supply, Inc., No. Civ. 05-40043, 2006 WL 901681, at *4 (E.D. Mich. 2006). District courts in the Sixth Circuit have held that the court where the first-filed case was pending should decide which of two actions involving the same issues should proceed. See, e.g., Convergys Corp. v. Manuel, No. 1:04-CV-332, slip op. at 2 (S.D. Ohio June 24, 2004); Daimler Chrysler Corp. v. General Motors Corp., 133 F. Supp. 2d 1041, 1042 (N.E. Ohio 2001) (collecting cases). This Court therefore defers to the ruling

¹ Plaintiffs also requested that if the Court granted Defendants' motion, that it also issue a preliminary injunction to Plaintiff, as also requested in Plaintiff's Motion for Preliminary Injunction. (See doc. #12 at 2-3; doc. # 2.) To the extent that Plaintiff's Memorandum in Opposition can also be read as an additional motion for a preliminary injunction, the Court also **DENIES** that motion **AS MOOT**.

² "The first-to-file rule is a well-established doctrine that encourages comity among federal courts of equal rank. The rule provides that when actions involving nearly identical parties and issues have been filed in two different district courts, 'the court in which the first suit was filed should generally proceed to judgment.'" Zide Sport Shop of Ohio, Inc. v. Ed Tobergte Assocs., Inc., No. 00-3183, 2001 WL 897452, at **3 (6th Cir. July 31, 2001) (citation omitted).

of the Michigan Court that the Michigan action should proceed to the exclusion of this action.³

Consequently, the Court orders that this case is hereby **DISMISSED** and **CLOSED**.

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge

³ The Michigan Court also granted FMP's motion to transfer the Michigan action to the Southern District of Ohio. Cobasys, 2006 WL 901681, at *9. The case was transferred to the Southern District of Ohio and is proceeding before Judge Watson as Cobasys, LLC v. FMP Resistance Welding Supply, Inc., No. 1:06-CV-00194. FMP has already filed a Counterclaim for Preliminary Injunction, Permanent Injunction, and Money Damages in Case No. 1:06-CV-00194 which mirrors their Complaint in this action. (Compare doc. #1 in this case with doc. # 28 in Case No. 1:06-CV-00194.)